

EXHIBIT D

**SINGLE PROJECT
CONSTRUCTION MANAGEMENT AGREEMENT
CONTRACT NO.**

When completed, return two (2) executed copies of this Single Project Construction Management Agreement, if by U.S. mail, addressed to Owner c/o Karl Wm. Auwarter, Mail Code DE1-0112, 201 North Walnut Street, Wilmington, DE 19801; and if hand delivered, to Owner c/o Karl William Auwarter, One Christina Center, Wilmington, DE, First Floor.

Owner:

Bank One Building Corporation
1 Bank One Plaza
Mail Code IL1-0503
Chicago, IL 60670-0503

Construction Manager:

Tishman Construction Corporation of Maryland
666 Fifth Avenue
New York, NY 10103-0256

Owner's Representative:

Karl Wm. Auwarter VP, Real Estate

Construction Manager's Key Staff Members:

Project Executive: Thomas Keane

**Architectural, Design & Engineering Service
Provider (each, an "A/D/E Service Provider"):**

Gensler
30 West Monroe St., Suite 400
Chicago, Illinois 60603
Attn: Mr. Lamar Johnson

Senior Project Manager: Robert Smith

Other Key Staff:**Title****Name**

To be determined

Engineer:

EYP Mission Critical Facilities, Inc.
Eighty One Main Street
White Plains, New York 10601
Attn: Mr. Mark Welte

Site:

Core Data Center #2
4001 Governor Printz Blvd.
Wilmington, Delaware 19802

Construction Manager's Authorized Signatories:

1. Daniel R. Tishman
2. Joseph B. Ryan, Jr.

This Single Project Construction Management Agreement ("Agreement") is made as of the 19th day of June, 2003, between Owner and Construction Manager. This Agreement, including the information set forth above and all exhibits and schedules attached hereto, are herein called the "Contract Documents." Owner and Construction Manager agree to the terms and conditions set forth in the Contract Documents.

1. Owner desires to engage Construction Manager as its agent for purposes of performance pursuant to this Agreement and Construction Manager desires to be engaged by Owner to consult with Owner and such other persons and entities as permitted by the Contract Documents or as Owner may from time to time direct in connection with the construction of improvements generally described on Exhibit A hereto to be made to the Site, all upon the terms set forth in the Contract Documents (herein, the "Project"). Construction Manager agrees to perform all such services in accordance with the Contract Documents.
2. Owner shall pay Construction Manager, for performance of services set forth in the Contract Documents, the fee set forth on Exhibit B hereto.

(1)

BANC ONE 07807
(CONFIDENTIAL)

3. Owner's existing Project Budget and existing Project Schedule are set forth on Exhibit C and Exhibit D hereto respectively.
4. Written notice relating to the Project shall be deemed to be duly served if served to Owner or Construction Manager, as the case may be, at the address for such party set forth below in accordance with Section 15(e) of the general conditions to this Agreement which is attached hereto as Exhibit E ("General Conditions"):

If to Owner, addressed to:

Banc One Building Corporation
Mail Code DE1-0112
201 North Walnut Street
Wilmington, DE 19801
Attention: Karl Wm. Auwarter VP, Real Estate

with copies to:

Banc One Building Corporation
Mail Code IL1-0503
1 Bank One Plaza
Chicago, IL 60670
Attention: Gary Fahrenbach, FVP, Real Estate

and to:

Bank One, N.A.
1111 Polaris Parkway
Mail Code OH1-0152
Columbus, OH 43240
Attention: Tom Hennessey

If to Construction Manager, addressed to:

Tishman Construction Corporation of
Maryland
666 Fifth Avenue
New York, NY 10103-0256
Attention: Daniel R. Tishman
and
Joseph B. Ryan, Jr.

This Agreement shall be effective only when (i) Owner executes and delivers this Agreement to Construction Manager after such Agreement has been executed by Construction Manager, (ii) all appropriate blanks contained herein are completed, and (iii) each of the Exhibits A, B, C, D and E (each of which is hereby incorporated herein) have been completed and attached hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth above.

OWNER:

BANC ONE BUILDING CORPORATION,
an Illinois corporation

By: 

Name: Michael F. Weinberg
Its: Director of Real Estate

CONSTRUCTION MANAGER:

TISHMAN CONSTRUCTION CORPORATION OF
MARYLAND, a Delaware corporation

By: 

Name: Joseph B. Ryan, Jr.
Its: Executive Vice President

LIST OF EXHIBITS
TO PROJECT AGREEMENT

EXHIBIT A General Description of Project Improvements

EXHIBIT B Basis of Compensation

EXHIBIT C Project Budget

EXHIBIT D Project Schedule

EXHIBIT E General Conditions

EXHIBIT A
to Project Agreement

GENERAL DESCRIPTION OF PROJECT IMPROVEMENTS
("Project")

The project scope involves the construction of a new out of the ground data facility, with a footprint of approximately 240,000 square feet, day one. A single story structure, built on slab housing two (2) data pods approximately 45,000 square feet each on raised floor with 3-foot plenums. Almost 10,000 square feet of space will be utilized for administrative space and fit out to accommodate 40-50 FTE's. The remainder of the building square footage will be used for space needed to support the buildings infrastructure and ancillary equipment to maintain a 2N+1 electrical and mechanical plant along with common areas, corridors and loading dock.

The core construction of the building involves steel frame and pre-cast panels with a poured deck. Interior build out is a combination of CMU and metal studding.

The entire building will be fitted out with addressable fire detection devices and will be fully sprinklered for suppression. The sprinkler systems are a combination of pre-action, dry and wet. Supplemental cooling units on the raised floor will be fitted out with early warning detection systems. There is no gas suppression scheduled for installation within the building envelope.

All permits, inspections and will be enforced by the County of New Castle in the State of Delaware. This includes but is not limited to all trades and State Fire Marshals Office.

EXHIBIT B
to Project Agreement

BASIS OF COMPENSATION

Subject to adjustment as provided in the last paragraph of this Exhibit B and to the terms of Section 13 and 14 of the General Conditions, Construction Manager shall be compensated, payable as set forth in the Contract Documents, for providing services in an amount equal to the product of (A) two and one half percent (2.5%) multiplied by (B) the sum of (i) the actual Total Construction Cost (as defined in Section 7(g) of the General Conditions) plus (ii) the cost of all prepurchased equipment (not included in the definition of Total Construction Cost) (such product is herein called the "Total CM Fee", and amounts thereof payable monthly to Construction Manager pursuant to the Contract Documents are herein called the "Current Construction Manager's Fee").

In addition to Total CM Fee and subject to adjustment as provided in the last paragraph of this Exhibit B and to the terms of Section 13 and 14 of the General Conditions, Construction Manager shall also be entitled to receive payments on account of General Conditions Items for providing services in the amount of the sum of (i) \$1,000,000 plus (ii) the product of (A) six percent (6%) multiplied by (B) the actual Total Construction Cost (such sum is herein called the total general conditions cost and hereinafter referred to as "Total GC Cost", and amounts thereof payable monthly to Construction Manager pursuant to the Contract Documents are herein called the "current general conditions costs" and herein referred to as "Current GC Costs"). The term Total Construction Cost shall not include any payments made to Construction Manager as Current Construction Manager's Fee, Total CM Fee, Total GC Cost, Current GC Costs, any unused contingency, any expense category included in General Conditions Items listed in Schedule B to the General Conditions (which expense categories include prepurchased equipment, electrical services alternatives, and demolition costs), or the costs of any Owner provided insurance.

Such Total CM Fee and Total GC Cost shall include compensation to Construction Manager for providing all services described in the Contract Documents relating to the Project, including all costs and expenses and providing all General Conditions Items set forth on Schedule B to the General Conditions. Construction Manager shall not be entitled to any further cost or expense reimbursement except in connection with Change Orders executed by Owner.

If final completion (as such term is defined in the Construction Services Agreement attached to the General Conditions as Schedule C-2) of all of the Project Improvements in accordance with all of the Construction Services Agreements has not occurred by September 15, 2004, as such date is extended for each "Owner Delay Day", if any, then in addition to Construction Manager's other obligations and subject to Owner's other rights under the Contract Documents, the Total CM Fee will be reduced by \$25,000.00 per week, or portion thereof, until such final completion, provided, however, that in no event shall such reduction exceed \$500,000; which reduction shall be computed as follows: the amount of the Total CM Fee shall, without further act, deed, or notice by any party be reduced by an amount equal to the product of (A) \$25,000.00 multiplied by (B) the integer number of calendar weeks, rounded up for any portion of a calendar week, until final completion (as such term is described in the Construction Services Agreement attached to the General Conditions as Schedule C-2) of all of the Project Improvements in accordance with all of the Construction Services Agreements occurs; provided, however, that in no event shall such reduction exceed \$500,000. An "Owner Delay Day" means each day of Owner Delay for which Construction Manager has given Owner written notice of and Owner has not corrected the event giving rise to such Owner's Delay (i.e., furnished the required A/D/E Service Provider delivery) within two (2) business days following Owner's receipt of such notice. An "Owner Delay" means any day which (1) the issuance of permits and governmental approvals is delayed through no fault of Construction Manager beyond the date required to be issued on the Project Schedule, (2) any delay occurs in Owner in responding to Construction Manager's request for approval or decision which is made in accordance with the Contract Documents and is not made within the specific time for response set forth in the notice requesting such response, (3) the failure of A/D/E Service Provider to deliver the plans and specifications as required by the Project Schedule, (4) the Project is delayed based upon an environmental impact delay, (5) the Project is delayed based upon a utility delay, (6) the Project is delayed based upon restricted hours of operation, (7) the Project is delayed based upon a force majeure occurrence, including, without limitation, terroristic acts or declaration of war and not caused by the wilfull misconduct or negligence of Construction Manager; or (8) the Work is delayed by inclement weather. Owner and Construction Manager agree that such adjustment to the Total CM Fee is reasonable, as of the date hereof, to compensate Owner for delays in the

completion of the Project Improvements which Construction Manager was and is responsible for overseeing and implementing on Owner's behalf.

		Budget CDC-2 7/17/2003	
Trade Subtotal	\$	110,618,420.00	
General Conditions 6%	\$	5,186,690.88	less \$ 24,173,572.00 prepurchased equipment
Subtotal	\$	115,805,110.88	On \$ 86,444,848.00
June Insurance	\$	72,014.00	
Subtotal	\$	115,877,124.88	
CM Fee @ 2.5%	\$	2,895,127.77	
Subtotal	\$	118,772,252.65	
General Conditions Lump	\$	1,000,000.00	
Sum	\$	119,700,238.65	
Previously Paid (Billed to Date)	\$	(229,965.73)	
Subtotal	\$	119,240,306.27	
CM Project Total	\$	119,240,306.27	
Owners Contingency @ 10%	\$	11,924,030.00	
Subtotal	\$	131,164,336.27	
Electrical Service Alternate	\$	2,500,000.00	
Subtotal	\$	133,664,336.27	
Insurance	\$	2,937,440.00	
Subtotal	\$	136,601,776.27	
Design Fees	\$	6,570,288.00	
Subtotal	\$	143,425,028.21	
Environmental	\$	1,749,530.00	
Subtotal	\$	145,174,558.21	
Geotech	\$	68,700.00	
Subtotal	\$	145,243,258.21	
Additional Civil	\$	48,900.00	
Subtotal	\$	145,292,158.21	
Permits	\$	1,400,000.00	
Project Total	\$	146,692,158.21	
Project Grand Total	\$	146,692,158.21	
Per Sq. Ft. Cost	\$	612.00	
(239,500 sq. ft.)			
Raised Floor Sq. Ft. Cost	\$	1,629.00	
(90,000 sq. ft.)			

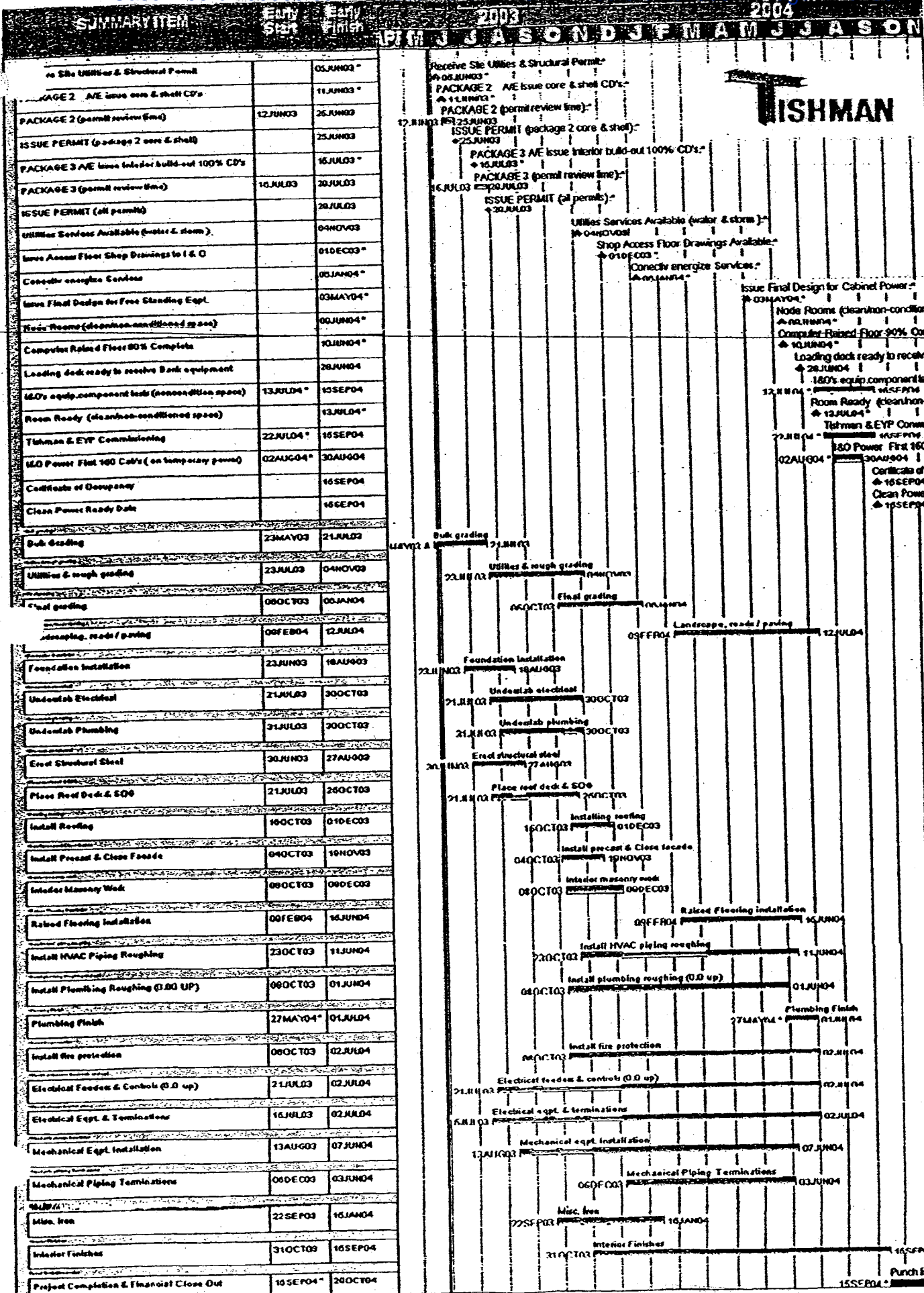
		Budget
		CDC-2
		<u>7/17/2003</u>
<u>Trade</u>		
Bulk Grading	\$	2,000,000.00
Site Work	\$	3,760,000.00
Excavation, (Foundation, SOG		
Roof Slab & Underlab Trenching)	\$	8,495,000.00
Miscellaneous Iron	\$	700,000.00
Roofing /WaterProofing	\$	1,800,000.00
Structural Steel & PreCast Inst:	\$	2,882,000.00
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Exterior Façade	\$	1,030,000.00
Interior Development	\$	5,922,000.00
Fire Protection	\$	1,995,000.00
Plumbing	\$	3,300,000.00
HVAC	\$	19,947,000.00
Cable Tray	\$	650,000.00
Electrical Work	\$	49,034,420.00
Security	\$	750,000.00
BMS	\$	2,500,000.00
FF&E	\$	750,000.00
Commissioning	\$	400,000.00
Testing and Inspection Service:	\$	180,000.00
Site Surveying Services	\$	150,000.00
Cat 5 Cabling	\$	4,000,000.00
Site Security	\$	320,000.00
GW Lease	\$	53,000.00
Total Deduct Pre-Purchased		\$ (24,173,572.00)
Trade Subtotal	\$	<u>110,618,420.00</u>

EXHIBIT D
to Project Agreement

PROJECT SCHEDULE

CDC-2

See Attached ~~two~~ pages



BANC ONE 07816

(CONFIDENTIAL)

EXHIBIT E
GENERAL CONDITIONS TO
SINGLE PROJECT CONSTRUCTION MANAGEMENT AGREEMENT

These General Conditions to Single Project Construction Management Agreement ("General Conditions") are attached to and made a part of the Single Project Construction Management Agreement, Contract No. _____ (herein, the "Agreement"). All terms defined in either the Agreement or in these General Conditions shall have the meaning ascribed thereto wherever used in the Contract Documents. Terms and abbreviations not specifically defined in the Contract Documents which have well known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings.

1. Project.

- (a) Owner's existing Project Budget and existing Project Schedule attached as Exhibits C and D to the Agreement, as the same may be revised and updated by or with the written approval of Owner from time to time, are hereafter respectively called the "Project Budget" and "Project Schedule".
- (b) With respect to the Project, the improvements to be designed and constructed for the Project are called the "Project Improvements".

2. Scope of Engagement.

Owner is engaging Construction Manager to act as Owner's agent and construction manager in connection with the construction of the Project Improvements, and Construction Manager is accepting such engagement and accepting the relationship of trust and confidence established between Construction Manager and Owner as contemplated by the Contract Documents. Construction Manager agrees to exert its best efforts to perform its duties and obligations contained in the Contract Documents in the most efficient, expeditious and economical manner, consistent with the interest of Owner. Construction Manager will perform, among its other obligations contained in the Contract Documents, the construction management services listed in Schedule A to these General Conditions attached hereto and made a part hereof.

Construction Manager agrees that (i) it shall be Owner's agent and (ii) it shall at all times represent itself as such with respect to all matters relating to the Contract Documents, and the construction of all Project Improvements.

Construction Manager shall use Construction Manager's best efforts to cause the construction of the Project Improvements in accordance with Project Budget and Project Schedule, as the same may be revised, refined and supplemented from time to time with Owner's written approval.

3. Staff.

Construction Manager shall furnish a competent staff for the effective administration, coordination and management of the construction of the Project Improvements. Construction Manager's staff will include the persons indicated on the cover page of the Agreement who will perform in the capacities and with the job responsibilities described therein. No members of Construction Manager's staff listed on the cover page of the Agreement will be changed or removed except with prior written notice to Owner designating a competent replacement for such employee, which replacement shall be reasonably satisfactory to Owner. Owner's approval of any such person (or of any substitute for such person) shall not relieve Construction Manager of or otherwise limit or affect Construction Manager's obligation to employ competent persons of sufficient skill and experience to perform their assigned responsibilities in accordance with the standards and requirements set forth in the Contract Documents. Construction Manager's Project Executive shall be in attendance at the Site for the duration of the construction of the Improvements and such Project Executive's duties shall not be diminished without the prior written consent of Owner. Construction Manager's Project Executive shall represent Construction Manager and all communications given to such Project Manager shall be as binding as if

given to Construction Manager. Upon Owner's request, any communication from such Project Executive shall be confirmed in writing by an authorized partner, member or officer, as the case may be, of Construction Manager. Construction Manager's Project Executive shall have overall responsibility to act for Construction Manager. Such Project Executive, or such other person as Owner shall approve, shall attend meetings at such reasonable times and places as shall be requested by Owner to report on the progress of the Project Improvements or to otherwise consult with Owner. Owner shall cause one or more of the persons designated on the cover page of the Agreement as Owner's representative to attend meetings with Construction Manager at such reasonable times as shall be agreed to by Owner and Construction Manager to consult with Construction Manager as to matters related to the Project. If Owner gives Construction Manager notice Construction Manager's Project Executive or any other of Construction Manager's personnel identified on page 1 of the Agreement or added subsequently as a key staff member (or any person that replaces any of the foregoing) has failed to perform his or her responsibilities in accordance with the standards set forth in the Contract Documents and such failure is not remedied within ten (10) days of such notice, Construction Manager shall, if requested by Owner, promptly replace such person with a person having the competence, skill and experience necessary to perform such responsibilities and approved by Owner.

4. Project Schedule.

- (a) Construction Manager shall develop for tracking purposes only a schedule of all actions, approvals, reviews, presentations, and meetings required by Owner which are to occur prior to commencement of the Work by Construction Contractors (such portion of the Project Schedule relating to such items and events is herein called the "Pre-Construction Phase Schedule"). The Pre-Construction Phase Schedule shall be included as part of the Project Schedule. The Project Schedule also includes all actions, approvals, reviews, presentations, and meetings required by Owner which are to occur on and after the commencement of the Work and includes a schedule of all services and Work to be provided from and after commencement of the Work, including the timing for performing all aspects of the Work by Construction Contractors (such portion of the Project Schedule relating to such items and events is herein called the "Construction Schedule"). Construction Manager shall review, monitor, and be responsible for suggesting updates to the Pre-Construction Phase Schedule and compare it against actual progress of the Project. The Pre-Construction Phase Schedule shall also include the dates/times for periodic meetings with Owner's Representative, design reviews, Owner approval processes, and dates for submissions of all reports from Construction Manager and A/D/E Service Provider to Owner pursuant to the Contract Documents. Construction Manager shall cooperate with A/D/E Service Provider to assist A/D/E Service Provider in meeting the schedule for A/D/E Service Provider's design services, and shall use Construction Manager's best efforts to assist Owner and A/D/E Service Provider so that the Pre-Construction Phase of the Project is completed in an efficient and timely fashion.
- (b) During the Pre-Construction Phase, Construction Manager shall continuously refine, add detail, and update the Construction Schedule to reflect the most recent information available and based upon the stage of design for Owner's review and approval. No revisions, amendments or other modifications to the Project Schedule, including either the Pre-Construction Phase Schedule or the Construction Schedule, shall be effective unless and until approved in writing by Owner. The Construction Schedule, as it exists and is so modified during the Pre-Construction Phase, shall be the preliminary basis upon which the cost estimates of the Work and upon which the final Construction Schedule shall be set, once agreed upon by Owner. Such Construction Schedule during the Pre-Construction Phase shall take into account Owner's occupancy, transitional activities and operational requirements and their relative priority and shall reflect a proposed date for the final completion of the Project. In developing the Construction Schedule, Construction Manager shall include scheduling information from A/D/E Service Provider, Owner and to the extent applicable, Construction Contractor(s). Such Construction Schedule shall include as milestones all the relevant work activities as well as the Project responsibilities of Owner, A/D/E Service Provider, Construction Manager and Construction Contractor(s) that affect the timely completion of the Project. The Project Schedule shall include an allocation of the Work into separate sequential portions of labor and materials in which Owner may

direct should be separately bid and awarded (each of which a "Bid Package" and collectively the "Bid Packages"). On or before the date which is two (2) weeks prior to Construction Manager sending out each Bid Package as set forth in Section 6 below, Construction Manager shall furnish Owner with a recommended updated construction schedule (and recommended final detailed construction schedule with the last Bid Package) setting forth, among other things, the anticipated completion schedule for all aspects of the Work, broken down in as much detail as Owner may request, which schedule shall match and conform with the schedules for the anticipated Bid Package(s) being prepared, which shall identify the critical path for the Work and components thereof, which shall be consistent with the most recently approved Construction Schedule (with any variances therein expressly identified to Owner), and which shall contain such other information as Owner may request (such recommended schedule is herein called the "Proposed Bid Construction Schedule"). All bid documents prepared by Construction Manager shall comply with the time requirements set forth in the Proposed Bid Construction Schedule. Each Construction Contractor's Bid shall be based upon the Proposed Bid Construction Schedule as modified (i) as requested by Owner, and (ii) as required based upon acceptable bids received as part of the bidding process described in Section 6 below. To the extent Construction Acceptance (as defined in Section 6(f) below) occurs for each Construction Services Agreement, such agreement shall include a Construction Schedule, including all applicable milestone dates, which shall be applicable to the Work included in such Construction Services Agreement. The date for the achievement of final completion of the Project (which includes all Work) reflected on such agreed upon final Construction Schedule shall become the "Scheduled Completion Date".

- (c) During the Construction Phase, Construction Manager shall consult with A/D/E Service Provider, Construction Contractors and Owner on the actual progress of the construction of the Project and, if requested by Owner, shall submit to Owner and A/D/E Service Provider, at no additional cost to Owner, a series of reports (at such intervals as may be requested by Owner) reflecting the progress of such Work. During the Construction Phase, the Construction Schedule shall be updated by Construction Manager as required and, in any event, at least monthly until the final completion of the Project. All updates shall use realistic activity sequences and durations, delivery of products requiring long lead time procurement, and shall realistically and accurately reflect the effect of all delays and extensions of time. No Construction Schedule updates or Project Schedule progress reports, whether or not objected to by Owner, shall extend the Scheduled Completion Date or any milestone date absent Owner's prior written consent. Within three (3) days after Construction Manager becomes aware of any matter which will cause any delay or deviation from the Construction Schedule, Construction Manager shall confirm, in writing, any delay or deviation from the Construction Schedule, including advice as to the action Construction Manager proposes to undertake to correct each deficiency.
- (d) Construction Manager shall use its best efforts to make up any delays in the Project Schedule caused by any Owner Delay.

5. Cost Estimates and Project Budget.

- (a) Construction Manager, having extensive experience in construction cost estimating, shall prepare written detailed cost estimates of the anticipated Total Construction Cost as part of the Project Budget. Construction Manager shall have primary responsibility for preparation of budgets for the Work throughout the design process for each Bid Package in cooperation and consultation with Owner and its consultants. Construction Manager shall submit to Owner, for Owner's review and approval, a proposed Project Budget with completion of the construction documents phase for each Bid Package and at such other times as Owner may request. Neither Construction Manager's submission nor Owner's approval of any Project Budget shall constitute the establishment of the Total Construction Cost, which shall be established only as provided in Section 7(g). Any Project Budget may contain one or more line items for Owner's contingency or a contingency expressly to be controlled by Owner and each such contingency is herein called an "Owner's Contingency". An Owner's Contingency (i) shall only be available for use in connection with the Work upon

Owner's written approval, which may be granted or denied by Owner in Owner's sole discretion for any or no reason, (ii) shall not be included in the final determination of Total Construction Cost, and (iii) which is not used upon final completion of the Work and Construction Manager is not entitled to any unused portion thereof. Each proposed updated Project Budget shall be submitted by Construction Manager to Owner for approval and shall contain a report of line item variances from the current Project Budget with information describing the basis for each variance. Additionally, on or before the date which is two weeks prior to Construction Manager sending out any Bid Package, as set forth in Section 6, Construction Manager shall furnish Owner with a proposed updated Project Budget estimate (and reporting the variances from the then Project current Budget as required above), based upon the Proposed Bid Construction Schedule, which estimate shall be Construction Manager's best estimate of its anticipated Total Construction Cost. If Owner approves such proposed updated project budget estimate, which approval shall not be unreasonably withheld or delayed, it shall then become the Project Budget. If Owner does not so approve such proposed updated project budget estimate within two business days or if Owner requests additional information relating to such proposed updated project budget within two business days, then the Project Budget in effect prior thereto shall remain the then current Project Budget. If Owner fails to approve or disapprove or request additional information relating to a proposed Project Budget within two business days, it shall be deemed an Owner Delay for purposes of Exhibit B to the Agreement.

- (b) Along with each Project Budget or proposed project budget estimate provided by Construction Manager pursuant to the Contract Documents, Construction Manager shall include, in bound form, all take-offs and backup documentation for such cost estimates.
- (c) Formal design reviews will be scheduled at the completion of the construction documents phase for each Bid Package. It is expected that the Owner's Representative, A/D/E Service Provider, Construction Manager, and others will participate in these reviews. Construction Manager shall propose modifications to Budget Estimates, as required, based on decisions made as a result of such design reviews.
- (d) Upon Construction Manager's receipt of fifty percent (50%) completed plans and specifications for each Bid Package and written authorization from Owner to proceed with the bid letting process, Construction Manager shall promptly proceed to initiate the bidding services described in Section 6 related to the bidding and negotiating of Construction Services Agreement for such Bid Packages. Bidding on such Bid Packages shall not be finalized until construction plans and specifications at such stage of completion as Owner may direct for each Bid Package are delivered to potential bidders (and accepted as part of the Bid Package). Owner may, at its option, authorize Construction Manager to proceed with the bidding of one or more Bid Packages (site utilities, foundation, structural, etc.) prior to the Construction Manager's receipt of completed construction plans and specifications for such Work.
- (e) If the total of any bid exceeds the Project Budget for the Work covered by such bid, then Owner may direct A/D/E Service Provider to re-design portions of the Project included in such Work, and Construction Manager shall, at its own cost and without additional compensation, cooperate with A/D/E Service Provider and Owner and provide such additional services deemed necessary by Owner, including the re-bidding or re-negotiating of the Construction Services Agreements where appropriate, until the proposed bid is within the amount of the Project Budget most recently approved by Owner for such Work.
- (f) Construction Manager shall develop and implement a cost-control system to monitor actual cost against the Project Budget by line item. The system shall include the capability to implement and monitor a schedule of values. The system is to provide continuous cost-to-date and cost-to-completion reports in a format acceptable to Owner. The cost-control system shall provide regular monitoring of the contract sum payable to each Construction Contractor and Construction Manager, showing actual

costs for activities in progress and estimates for uncompleted tasks and identifying variances between actual and budgeted costs.

- (g) Once a Construction Services Agreement is entered into with a Construction Contractor, before Owner authorizes any change to any Construction Services Agreement (which changes, if they would impact upon the price paid by Owner or the Project Schedule or any portion thereof, must be set forth in a change order approved in writing by Owner), Construction Manager shall inform Owner in writing of the anticipated economic consequences of the change upon the Project Budget, Total Construction Cost and the Project Schedule, including costs or expenses generated by time extensions caused by the change and such changes must be made part of any change order related thereto.
- (h) Construction Manager will keep complete and detailed books and records which will accurately reflect all costs under all Construction Services Agreements. Such books and records and all supporting data shall, at all reasonable times and upon reasonable notice, until three (3) years after the Work has been finally completed, be open for audit, inspection and copying by Owner and its authorized representatives. Such Project records include accounting records (hard copy, as well as computer readable data); written policies and procedures (including proposals of successful and unsuccessful bidders, bid recaps, etc.); original estimates; estimating work sheets; bidding information, including all bids; correspondence; memoranda; recordings; and any other supporting information deemed necessary by Owner to substantiate charges related to the Contract Documents and the components of the Total Construction Cost, to permit evaluation and verification of Construction Manager's compliance with Owner's requirements as set forth in the Contract Documents, and to otherwise confirm or evaluate any matter bearing on or pertaining to any matters, rights, duties or obligations under or covered by the Contract Documents. Wherever said records and documents may be located or maintained (at the Site or at headquarters offices of Construction Manager), Owner shall be allowed, without prior notice, to review such records and documents of the Project and to converse with all current employees as necessary to understand the records and documents furnished to Owner. Owner or its designee may, with five (5) business days prior notice, conduct audits in the field office at the Site or at the headquarters offices of Construction Manager. In the course of such audits, Owner or its designee shall be afforded reasonable access to Construction Manager's records related to the Project, and shall also be allowed to converse with any of Construction Manager's employees, as permitted under the provisions of the Contract Documents, throughout the term of the Contract Documents and for a period of three years after final completion of the Project or longer if required by law.
- (i) Construction Manager shall cooperate with Owner and Owner's third party consultants and cause all bidders and Construction Contractors to cause all portions of bids and costs included in each Bid Package to be itemized in accordance with Owner's cost segregation study as directed from time to time by Owner or its third party consultant to allow Owner to properly allocate each element of cost relating to the Project for federal income tax purposes.

6. Bid Requirements.

- (a) All portion of the labor, materials and equipment required to construct the Project Improvements (herein, the "Work") shall be performed by one or more Construction Contractors under Construction Services Agreements. All contracts for the construction of the Project Improvements shall be based upon either (i) guaranteed maximum price bids or (ii) lump sum fixed price bids, as designated by Owner for each Bid Package. For each Bid Package, Construction Manager shall attempt to obtain all contracts to be bid on by at least three (3) contractors having the experience and capacity to perform the Work being bid upon. Construction Manager shall not solicit any bids for all or any portion of the construction of the Project Improvements, including any Bid Package, without first receiving Owner's direction on the type of bid to solicit and form of agreement (one of Schedule C-1, Schedule C-2, or Schedule C-3). No Construction Service Agreement shall be entered into by Construction Manager unless and until Construction Manager has (i) complied with the requirements of this Section 6, (ii)

included in the applicable Bid Package the form of agreement Owner desires be utilized for such bid (which shall be one of the forms attached hereto as Schedule C-1, Schedule C-2, or Schedule C-3), (iii) solicited at least three (3) competitive bids from qualified Construction Contractors approved by Owner, (iv) obtained rate and unit price schedules related to the Work to be accomplished by such Construction Contractor, (v) obtained an interim or final schedule of values for the portion of the Work included in such Bid Package (and if an interim schedule of values is used, Construction Manager will coordinate with such Construction Contractor to obtain a detailed final schedule of values following the award to such Construction Contractor), (vi) obtain only lump sum fixed price or guaranteed maximum cost bids for such Work (such bid type to be approved in advance by Owner), (vii) disclosed the results from such competitive bids and rate and price schedule information in writing to Owner, (viii) made a recommendation to Owner with respect to the bid to be accepted and (ix) obtained Owner's approval of Construction Contractor's acceptance of the bid, including the applicable form of Construction Services Agreement. The approval rights of Owner shall not relieve Construction Manager of or otherwise affect Construction Manager's obligation to recommend only potential Construction Contractors that, to the best of Construction Manager's knowledge, have adequate skill, experience, work forces and other qualifications necessary to perform the Work in accordance with the Construction Services Agreement. Construction Manager shall not be permitted to bid on any portions of the Work.

- (b) Construction Manager, using criteria developed by Construction Manager and reviewed and approved by Owner, shall identify and pre-qualify prospective bidders for the Work and each portion thereof, and develop bidder interest. Construction Manager shall use its best efforts to develop and implement a plan to inform small businesses of bidding opportunities for potential Construction Contractors. From time to time with each bid package, Construction Manager shall furnish to Owner a list of potential Construction Contractors, along with Construction Manager's recommendations with respect to same, and Owner shall reply to Construction Manager, in writing, stating whether Owner has an objection to any potential Construction Contractors. Construction Manager shall not request bids from, or contract with, any potential Construction Contractors to whom Owner shall have objected. After an acceptable list of potential Construction Contractors has been established, all Construction Services Agreements shall be bid, awarded, and entered into on a competitive bid basis in accordance with the requirements of this Section 6 for each Bid Package except where Owner and Construction Manager agree in writing to award a Construction Service Agreement for a particular Bid Package on a negotiated basis. At any time Construction Manager utilizes a Construction Services Agreement on either (i) a negotiated basis, or (ii) without obtaining three (3) competitive bids, Construction Manager shall obtain Owner's written consent and approval to such procedures.
- (c) For all Construction Service Agreements to be awarded on a competitive bid basis, Construction Manager shall provide the following services for each Bid Package:
 - (i) Construction Manager shall prepare bid documents in cooperation with Owner and A/D/E Service Provider for all tasks to be performed as part of the Work included in such Bid Package, that incorporate and identify the requirements for each scope of Work included in such Bid Package, advise all prospective bidders of Owner's overall objectives, and describe all other requirements contained in the Construction Services Agreement which would be applicable to such Work included in such Bid Package. Owner shall furnish Construction Manager with all copies of the plans and specifications to be included in each Bid Package. Construction Manager shall assure that all Work requirements which are to be included in the Construction Services Agreement are covered in the Bid Packages so that the Work will be performed completely, but without duplication or overlap. All bid documents and packages shall be subject to Owner's approval, and it is specifically agreed that Owner may specify the general scope of Work to be included within each Bid Package as set forth in Section 4(b). Construction Manager shall require that the bids be subject to acceptance for a period of not less than one hundred twenty (120) days after the deadline for receipt of bids.

- (ii) Following Construction Manager's receipt of fifty percent (50%) completed plans and specifications (as reasonably determined by Owner and A/D/E Service Provider) for each Bid Package and after receiving written approval from Owner's Representative, Construction Manager shall issue preliminary bidding documents to pre-qualified prospective Construction Contractors. Bidding on such Bid Packages shall not be finalized until plans and specifications at such stage of completion as Owner may direct for such Bid Packages are incorporated into such bidding documents.
 - (iii) Construction Manager shall schedule and conduct all pre-bid conferences to familiarize bidders with job conditions, bid documents, Project management procedures, and any special systems, materials, or methods. If Construction Manager or a potential Construction Contractor desires to recommend or propose a substitution of materials or equipment or other changes in the Work from the material, equipment, or work specified in the plans and specifications as part of a Bid Package for any portion of the Work, Construction Manager or such potential Construction Contractor, as applicable, shall only be permitted to do so if (i) the bid includes a bid based upon the material, equipment, or work as specified in the plans and specifications for such Bid Package, (ii) the bid sets forth Construction Manager's or such potential Construction Contractor's, as applicable, suggested substitution and detailed reasons, including the benefits to Owner, of considering such substitution, and (iii) the price and schedule impact of incorporating such substitution. Owner is under no obligation to review, analyze, consider, or accept any proposed substitution, but may do so acting in its sole discretion, for any or no reason at all.
 - (iv) Construction Manager shall conduct pre-award conferences, with Owner's assistance, for the purpose of reviewing bids and verifying completeness with one or more bidders.
 - (v) Construction Manager shall require all Construction Service Agreement bids to be submitted by the bidders directly to Construction Manager, with two originals and four copies. Construction Manager shall notify Owner of the time Construction Manager proposes to open the bids. Construction Manager shall forward three copies of the bids to Owner. Only with Owner's prior agreement and, if required by Owner, Owner's Representative's presence, shall Construction Manager thereafter conduct post-bid conferences with bidders as necessary. Construction Manager shall prepare bid analyses and submit award recommendations to Owner for approval prior to execution of any Construction Service Agreement. Construction Manager shall identify scope discrepancies and issues in the bids, and may make adjustments in an amount sufficient to cover any issue or scope discrepancy that arises during the bid or analysis period.
 - (vi) Construction Manager shall consult with Owner with respect to bids received and Construction Manager's recommendations prior to any Construction Service Agreement being entered into by Construction Manager. Owner shall be entitled to disapprove Construction Manager's recommendations on the basis of: (i) cost, (ii) responsiveness of the bid, or (iii) any other reasonable objection raised by Owner. If Owner exercises this right, the Work shall be awarded to another bidder or the Work shall be re-bid.
- (d) During the Construction Services Agreement bidding process, Construction Manager shall resolve any ambiguities or irregularities in the bid proposals and recommend to Owner which bidders should be awarded the Work for each Bid Package. Construction Manager shall not recommend award of any bid until Construction Manager has determined that the bid proposals are in conformity with the Bid Packages, including form of Construction Services Agreement, and otherwise as required by the Contract Documents. The award of all Construction Services Agreements is subject to prior approval by Owner, and Owner expressly reserves the right to reject any (including the lowest) responsible, responsive bid.

- (e) Construction Manager shall review the proposed Construction Contractor bids with Owner and A/D/E Service Provider. Owner may direct A/D/E Service Provider to make revisions to the Project design for a Bid Package to achieve Owner's budget goals, and Construction Manager shall cooperate with A/D/E Service Provider and Owner and render such additional services as may be requested by Owner to reduce the Construction Contractor bids.
- (f) Only after otherwise complying with the terms of this Section 6 and obtaining Owner's written consent as to (i) the identity of the potential Construction Contractor and, if applicable, sub-contractor(s) and (ii) the completed form of the potential Construction Services Agreement for such potential Construction Contractor for a Bid Package shall Construction Manager recommend to Owner that Owner provide final approval and direct Construction Manager to enter into such approved form of Construction Services Agreement(s) with such approved Construction Contractor(s) for the applicable Bid Package (all such construction services agreements, once entered into by Construction Manager at Owner's written direction, are herein collectively called the "Construction Services Agreement" and each reference to Construction Services Agreement shall apply to each such construction services agreement). Each of the contractor(s) with which a Construction Services Agreement is entered into is herein called a "Construction Contractor". The date such Construction Services Agreement is executed by Construction Manager and the applicable Construction Contractor is herein called the "Construction Acceptance Date" and such event is herein called the "Construction Acceptance." The first date when all Construction Services Agreements for the entire Project (and all Bid Packages) have been executed by Construction Manager and the applicable Construction Contractors is herein called the "Full Award Date".
- (g) For each Bid Package upon Construction Acceptance for such Bid Package Construction Manager shall confirm the Project Schedule and Project Budget to include the information (including schedule and price) from such Construction Services Agreement.

7. Construction.

- (a) Construction Manager shall administer, monitor, and enforce all obligations of all Construction Contractors under the applicable Construction Services Agreements, in each case using the skill and diligence that can be expected of a fully competent first-class construction manager acting in Owner's best interests. Construction Manager will not be responsible for errors or omissions by Construction Contractor (but in the event of any errors or omissions by any Construction Contractor, Construction Manager shall diligently pursue and enforce Owner's rights, at Owner's cost for counsel if counsel is retained, against such Construction Contractor, and any other applicable parties as set forth elsewhere in this Project Agreement). Construction Manager shall only be responsible to Owner for Construction Manager's own acts and omissions which violate Construction Manager's duties to Owner contained in or arising pursuant to the Contract Documents, and Construction Manager shall defend, indemnify, and hold Owner harmless from all costs and liabilities resulting from Construction Manager's negligent acts and omissions. In each instance where approval or consent of the "Owner" is required under a Construction Services Agreement (including scope changes, change orders, and approval of subcontractors), Construction Manager will submit to Owner the matter to be approved, together with Construction Manager's recommendation as to approval, disapproval, or conditional approval and request the time frame within which Owner needs to respond. Additionally, immediately upon receipt Construction Manager shall provide to Owner all notices intended for "Owner" under a Construction Services Agreement. Should any default by a Construction Contractor under a Construction Services Agreement occur, Construction Manager, acting in its capacity as Owner's construction manager, shall enforce Owner's rights and remedies under such Construction Services Agreement, with the advice and prior concurrence of Owner at Owner's cost for counsel if counsel is retained. If more than one Construction Contractor is used for the construction of the Project Improvements, Construction Manager shall be responsible for coordinating all Construction Contractors' activities in a manner which shall be as efficient as possible and eliminate, to the extent possible, duplicative efforts by any Construction Contractor.

- (b) Each Construction Contractor's request for payment under its Construction Services Agreement shall be accompanied by all lien waivers, certifications and other documents and materials required as a condition of payment in such Construction Contractor's Construction Services Agreement. Such payment request shall also contain a breakdown of that Construction Contractor's payment request and a certification from Construction Manager that, to the best of Construction Manager's knowledge, such Construction Contractor is entitled to receive such funds pursuant to the terms of such Construction Contractor's Construction Services Agreement.
- (c) Construction Manager recognizes and agrees that Construction Manager's responsibilities relating to the Project do include coordinating interior services as generally described in the Construction Services Agreement attached hereto as Schedule C-2 to the extent directed by Owner, and as such, all projected costs and expenses related to such interior services shall be included in the Project Budget (and estimates thereof) and included, once incurred under a Construction Services Agreement, in the computation of Total Construction Cost.
- (d) Construction Manager shall effectively and efficiently organize, manage, coordinate and direct all construction activity for the Work, administer all Construction Services Agreements, require all Construction Contractors to perform in accordance with the Construction Services Agreements, and make appropriate payments to all Construction Contractors (based upon payments to Construction Manager from Owner). Construction Manager shall use its best efforts to cause the Construction Contractors to complete the Work in accordance with the Construction Services Agreements. Construction Manager will prepare a brief description of the Work and where it is being performed each day and deliver such daily reports to Owner's Representative.
- (e) Construction Manager shall effectively and efficiently schedule and coordinate the Work of all Construction Contractors and, to the extent applicable, purchases by Owner, so as to complete the Project within the Scheduled Completion Date, including all milestones therein. Construction Manager shall work with the other members of the Owner's project team and assume responsibility for establishing and implementing procedures for coordination, Project planning and performance reporting among Owner, A/D/E Service Provider, and the Construction Contractors with respect to the Project. Construction Manager agrees to coordinate the staging and scheduling of all Work to allow for an efficient overall workplace for the Project as a whole.
- (f) Construction Manager shall cause all Construction Services Agreements to include in the cost and, if applicable, any guaranteed maximum price, all Allowances stated in the Construction Services Agreement. Items covered by these Allowances shall be supplied for such amounts and by such persons as Owner may direct. "Allowances" means the amounts stated to be allowances from time to time in the Construction Services Agreements and such amounts shall represent the actual cost of the articles for which allowances are stated, and include any cost of hauling, cartage, supervision, preparing of work, and the cost of installing. Whenever the estimated budget cost attributable to an Allowance item is less than the actual cost of such Allowance, the cost and, if applicable, any guaranteed maximum price, shall be increased by change order to reflect such difference. Whenever the estimated budget cost attributable to an Allowance item is greater than the actual cost of such Allowance, the cost and, if applicable, any guaranteed maximum price, shall be decreased by change order to reflect such difference. In accordance with the plans and specifications, Owner will select materials or equipment for which an Allowance is provided and notify Construction Manager of Owner's selection and price agreed upon and, upon such notice Construction Manager shall so notify the appropriate Construction Contractor. Construction Manager shall then cause Construction Contractor to contract for said materials and/or equipment and supervise their delivery and installation and be responsible for such Allowance items as fully as for other parts of the Work applicable to such Construction Contractor's Construction Services Agreement.
- (g) Upon final completion of the Project (including all Work) and final payment being made to all Construction Contractors in accordance with the Construction Services Agreement, Construction

Manager shall certify to Owner the full amount paid to all Construction Contractors pursuant to Construction Services Agreements and such amount, as confirmed by Owner, is herein called the "Total Construction Cost". Total Construction Cost shall not include any payments made to Construction Manager as Total CM Fee, Current Construction Manager's Fee, Total GC Costs, Current GC Costs, any unused contingency, any expense category included in General Conditions Items listed in Schedule B to these General Conditions (which expense categories include prepurchased equipment, electrical services alternatives and demolition costs), or costs of Owner provided insurance.

8. Payments to Construction Manager and Construction Contractors.

From time to time but not more frequently than once each calendar month, Construction Manager shall cause all requests for payments relating to the Project (including payment requests from Construction Manager, and each Construction Contractor) to be submitted as part of one summary package ("Project Payment Request") to Owner. Each Project Payment Request shall contain (i) each completed application for payment submitted by each Construction Contractor and certified by Construction Manager, (ii) a summary of all amounts owed by each Construction Contractor, and (iii) the computation of all Current GC Costs and Current Construction Manager's Fee then due Construction Manager, all such deliveries required by clauses (i), (ii), and (iii) shall be in a form and containing such certifications as are acceptable to Owner. Each Construction Contractor will be directed by Owner to submit respective Project Payment Requests through Construction Manager to Owner. All Project Payment Requests shall be in the billing procedures format satisfactory to Owner and Construction Manager. Within thirty (30) days of receipt of a Project Payment Request and to the extent such Project Payment Request is complete and satisfactory to Owner, Owner shall pay Construction Manager the total amount owed by Owner in the Project Payment Request and Construction Manager shall then make payments as required by each Construction Services Agreement to each Construction Contractor then so due. Owner shall have no obligation to pay or confirm the payment of monies to any party except as set forth above.

9. Additional Obligations and Duties.

- (a) Construction Manager shall perform its obligations contained in the Contract Documents so that none of Construction Contractor or any of its employees shall file a lien against the Project or the Site. If any lien is filed against the Project or the Site by any of the foregoing as the result of the willful misconduct or negligent acts or omissions of Construction Manager, Construction Manager shall, within ten (10) days of Owner's written request, cause the such lien to be removed, bonded over, or cause such lien to be insured over by the title insurance company most recently insuring title to the Site, in form acceptable to Owner.
- (b) Construction Manager shall perform all of its services under the Contract Documents and require in each Construction Services Agreement that each Construction Contractor to perform the Work under its Construction Services Agreement in accordance with all laws, ordinances, codes, rules and regulations, orders and decisions of all government authorities having jurisdiction over the Site ("Government Requirements"), and otherwise perform Construction Manager's obligations contemplated in the Contract Documents. Construction Manager acknowledges that Construction Manager has visited the Site, examined all conditions affecting the Work, and is fully familiar with all of the conditions thereon and affecting the Work and the Work area. Except as previously approved in writing by Owner, Construction Manager shall not permit any Construction Contractor to perform any portion of the Work under its Construction Services Agreement at any time without full construction plans and specifications related to such Work or, where required, approved (or approved as noted) shop drawings, product data or samples for such portion of such Work.
- (c) Construction Manager shall furnish its best skill and judgment, employing first-class professional standards, and shall cooperate with the other parties involved in the Work in furthering the interests of Owner. Construction Manager accepts sole responsibility for the acts and omissions of Construction Manager's employees, subcontractors and their respective agents and employees (other than and

specifically excluding Construction Contractors). Construction Manager shall (i) at all times enforce strict discipline and good order among Construction Manager's employees and shall not employ on the Project any unfit person or anyone not skilled in the task assigned to him or her; (ii) confine Construction Manager's equipment, apparatus, materials, and operations of its employees and those employees of all Construction Contractors within limits allowed by Owner and not unnecessarily burden the Site with materials; and (iii) correct, at Construction Manager's expense if the result of Construction Manager's willful misconduct or negligent acts or omissions or, as applicable, at the appropriate Construction Contractor's expense, damage to property resulting from the Work.

- (d) Construction Manager shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, age or national origin or ancestry. Construction Manager shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, age or national origin or ancestry. Construction Manager shall comply with, and shall cooperate with Owner and other contractors and subcontractors in connection with compliance with, the regulations of the Occupational Safety and Health Act of 1970, as amended ("OSHA"), or any similar state law which is applicable. If any Construction Manager's employee working on the Project files a charge of noncompliance with OSHA, Construction Manager shall notify Owner's Representative promptly upon receiving notice of such charge.
- (e) Construction Manager shall cause the Construction Contractors to procure all trade permits (excluding the general building permit, provided that Construction Manager shall assist in obtaining the general building permit), licenses and certificates of inspection or occupancy necessary to complete the Project and occupy the Project, and shall deliver same to Owner promptly upon completion of the Project or earlier (if issued) at Owner's request. If any utility connection charges, tap-in fees or similar items are required to be paid as a condition precedent to the issuance of any such permits, licenses, or certificates, Construction Manager shall notify Owner thereof and assist Owner's payment of such items in a timely manner to permit proper issuance of all permits, licenses and certificates as required hereby. Prior to the application for a building permit, Construction Manager shall secure Owner's approval of the Project value to be used for permit purposes.
- (f) Construction Manager shall commence performance of its obligations under the Contract Documents upon the date set forth in the Project Schedule for commencement of Construction Manager's services or, if no such date is included in the Project Schedule, upon execution of the Agreement by Owner and delivery to Construction Manager of the Agreement by Owner. Construction Manager shall, subject to adjustment evidenced by change orders, cause Construction Contractors to complete each of the elements of the Project, including substantial completion and final completion of the Project, as set forth in the Project Schedule. Construction Manager shall consult with Owner on the actual progress of the work performed by the Construction Contractors and, if requested by Owner at any time, shall at no additional cost to Owner, submit to Owner a series of reports (at such intervals as may be requested by Owner) reflecting the progress of the work performed by the Construction Contractors.
- (g) Construction Manager shall maintain or cause to be maintained at the Site for Owner one record copy of all current and up-to-date plans and specifications, addenda, change orders and other modifications, in good order and marked currently to record all changes made during construction, and approved shop drawings, product data and samples. No review or receipt of such records by Owner shall be a waiver of any deviation from the Contract Documents, Construction Services Agreement, or in any way relieve Construction Manager from Construction Manager's performance of services under the Contract Documents or any Construction Contractor's responsibility to perform the Work in accordance with its Construction Services Agreement unless such deviations are specifically noted in writing by Construction Manager or Construction Contractor, as applicable, and specifically approved in writing by Owner. Construction Manager shall furnish or cause to be furnished to Owner four complete sets of manuals containing the manufacturers' instructions for maintenance and operation of each item of equipment furnished under the Contract Documents and all Construction Services

Agreements and any additional data specifically requested under the various sections of the specifications for each division of the work. The manuals shall be arranged in proper order, indexed and suitably bound.

- (h) Construction Manager shall procure, review, and submit, with reasonable promptness and in such sequence as to cause no delay in the Work of Construction Contractors or in any separate work of Owner, all shop drawings, product data and samples required by Contract Documents or by the Construction Services Agreement. Construction Manager shall maintain or cause to be maintained an accurate record of all deviations from the plans and specifications which occur in the Work of Construction Contractors as actually constructed, and shall submit to Owner, five (5) sets (one to be AutoCAD 14 [or a more recent version thereof]) of complete information including descriptions, drawings, sketches, marked prints, and similar data, indicating the "as-built" conditions. Construction Manager shall keep or cause to be kept "as-built" record drawings when an activity is completed, for such activity, and for all of the Project upon its completion. Submittal of such drawings is required prior to Construction Manager submitting its application for final payment.
- (i) Construction Manager at all times shall keep the Site in a neat and orderly condition and free from accumulation of waste materials or rubbish caused by Construction Manager's or any Construction Contractor's operations. In order to make the Project fit for occupancy for its intended purposes upon substantial completion, Construction Manager shall remove or cause to be removed as soon as and to the extent practicable all temporary facilities, waste materials and rubbish from and about the Site as well as all supplies, tools, construction equipment, machinery and surplus materials and leave such areas in a broom clean condition. Any items damaged by Construction Manager or its employees shall be replaced, and all surfaces which have been scratched or marred shall be refinished, at no additional cost to Owner.
- (j)
 - (i) To the fullest extent permitted by law, Construction Manager shall indemnify, defend, save and hold Owner; its parent and affiliated companies; Owner's tenants, if any; and the shareholders, members, partners, officers, employees of all of them (collectively the "Indemnitees") harmless from and against all loss and expense (including reasonable attorneys' fees and other costs and expenses) by reason of the liability imposed by law upon the Indemnitees, or any of them, for damages because of Construction Manager's breach of the Contract Documents directly or indirectly arising or alleged to arise out of the performance of or the failure to perform the services required of Construction Manager under the Contract Documents.
 - (ii) The provisions of the indemnity provided for herein shall not be construed to indemnify any Indemnitee for its own negligence, if any, to the extent not permitted by law or to eliminate or reduce any other indemnification, right or remedy which Owner has under Contract Documents or otherwise.
 - (iii) Construction Manager shall be notified of any claims against any of the Indemnitees of which Owner has notice, and Owner shall give Construction Manager such reasonable information and assistance as may be requested by Construction Manager to perform the obligations set forth in this Section; provided, however, that (i) failure to notify Construction Manager of any claim of which Owner has notice shall not relieve Construction Manager of any obligations contained in this Section to the extent Construction Manager is not irrevocably or materially prejudiced by such failure to so notify Construction Manager; and (ii) the obligation of Owner to give information and assistance shall be at Construction Manager's expense and shall not obligate Owner to incur any expense or liability.
 - (v) Construction Manager expressly understands and agrees that any performance or labor and material bond, if any, or insurance protection required by any provision of the Contract Documents, or otherwise provided by Construction Manager, shall in no way limit the responsibility to indemnify, save and hold harmless and defend each of the Indemnitees as herein provided.

(vi) If any claim indemnified hereunder has not been settled or discharged when the Project is completed, final payment of the Total CM Fee and Total GC Costs shall not be due, unless and until Construction Manager provides a (i) bond issued by a bonding company satisfactory to Owner, (ii) other security acceptable in an amount equal to 150% of the amount of any such claim, including interest on such claim as estimated by Owner, or (iii) other security acceptable to Owner, which bond or other security shall be in form and substance satisfactory to Owner and shall be subject to such increase as Owner may from time to time require as interest accrues on such claim.

(k) Construction Manager shall not divulge information concerning the Contract Documents to anyone (including information in applications for permits, variances, etc.) without Owner's prior written consent. Owner reserves the right to control the release of all information relating to the Project, including the timing of any release, together with its form and content. This requirement shall survive the expiration of the Contract Documents.

(l) Construction Manager shall perform all of its obligations under the Contract Documents under the standard of care of a first-class construction manager. All references in the Contract Documents to a "first-class construction manager", "fully competent first-class construction manager", or activities to be performed in a "first-class manner" or any similar words or phrases as used in reference to Construction Manager shall mean Construction Manager's best skill and judgment in accordance with the practice exercised by a fully competent, first-class construction manager whose competence and professionalism equals that of construction managers with at least ten (10) years experience in performing construction management services and constructing projects similar in scope and complexity to those required of the Construction Contractors under the Construction Services Agreements for large corporate and institutional clients.

10. Compensation.

(a) As used in the Contract Documents, "General Conditions Items" means and is limited to the services and expense categories set forth on Schedule B attached to these General Conditions. So long as Construction Manager has performed its obligations pursuant to the Contract Documents for the Project, by making a payment request as otherwise required by the Contract Documents as part of the Project Payment Request, Construction Manager shall be entitled to monthly payments of the Current Construction Manager's Fee and Current GC Costs for the Project as follows:

(i) Current Construction Manager's Fee. Monthly payments of the Current Construction Manager's fee shall be subject to retainage of ten percent (10%) and payable as follows. Monthly payments of the Current Construction Manager's Fee shall be made to Construction Manager in an amount equal to (A) the product of (1) two and fifty hundredths percent (2.50%) multiplied by (2) the sum of (i) the total payments made to date and which are then currently due and payable to all Construction Contractors, subject to retainage of ten percent (10%), plus (ii) the total payments made to providers of prepurchased equipment related to such prepurchased equipment and (B) subtracting therefrom the portion of Current Construction Manager's Fee previously paid. The remaining ten percent (10%) retainage of Total CM Fee (which is equal to twenty-five hundredths percent (0.25%) of total payments made to date and which are then currently due and payable to all Construction Contractors and prepurchased equipment suppliers), to the extent not previously paid, shall be paid as set forth in Section 10(c), Section 13, or Section 14, to the extent applicable, below.

(ii) Current GC Costs. Owner and Contractor acknowledge and agree that Owner has paid Contractor \$163,603.22 prior to the execution of this Agreement and that such payment is hereby included in the definition of payments made which are deemed to be Current GC Costs. The May 2003 request for payment of Current GC Costs is currently being processed. Following agreement as to the amount of such May 2003, payment of Current GC Costs, Owner and Construction Manager shall reasonably agree upon the equal monthly amount of Current GC Costs to be paid for June 2003 through scheduled final completion based upon the current project budget. Until the Full Award Date,

monthly payments of the Current GC Costs shall be paid to Construction Manager in such agreed to equal monthly amounts. From the Full Award Date until the Scheduled Completion Date, monthly payments of the Current GC Costs shall be made to Construction Manager in an amount equal to the Construction GC Costs Amount. As used herein, the "Construction GC Cost Amount" means the result of (A) the sum of \$1,000,000 plus the product of (i) six percent (6%) multiplied by (ii) the budgeted amount of the anticipated total construction costs based upon all Construction Services Agreements, which sum is reduced by the total Current GC Costs paid prior to the Full Award Date, divided by (B) the number of calendar months in the Project Schedule from the Full Award Date until the Scheduled Completion Date of the Project.

Each request for payment for the Project from Construction Manager shall be accompanied by an instrument legally sufficient to waive all rights to a mechanic's lien for all amounts theretofore paid Construction Manager under the Contract Documents, together with the amount currently requested by Construction Manager for such Project.

- (b) From time to time upon any change in the amounts to be paid pursuant to a Construction Services Agreement, the Project Budget shall automatically be deemed to be revised to reflect such amended amounts. Additionally, from time to time, if based upon any change in the Project Budget, the computation of Total Construction Costs, or for any other reason, Construction Manager has received payments of Current Construction Manager's Fee and/or Current GC Costs which exceed the amount Construction Manager is entitled to receive as set forth in Section 10(a) above, then, at Owner's option exercisable by providing Construction Manager with written notice of such election, either (i) Construction Manager shall promptly, and in any event within five (5) business days, repay such excess to Owner or (ii) Owner shall offset such excess against the next payments due Construction Manager.
- (c) So long as Construction Manager has performed its obligations pursuant to the Contract Documents for the Project, upon final completion of the Project, including all Work, the establishment of the Total Construction Costs, and an application for payment from Construction Manager certifying to Owner that Construction Manager has completed all of its obligations required to be completed by such date accompanied by an instrument legally sufficient to finally waive all Construction Manager's rights to a mechanic's lien for the Project, Construction Manager shall be entitled to a final payment equal to (i) the sum of the Total CM Fee plus the Total GC Cost reduced by (ii) the sum of all Current Construction Manager's Fee and Current GC Costs theretofore paid to Construction Manager. The amounts payable pursuant to this Section 10(c) are subject to adjustment as set forth in Exhibit B to the Agreement. Upon final completion of the Project, if (A) the sum of all Current Construction Manager's Fee and Current GC Costs theretofore paid to Construction Manager exceed (B) the sum of the Total CM Fee plus the Total GC Cost, Construction Manager shall promptly pay (and in any event within 10 days following Owner's written request) such excess to Owner.
- (d) Except as specifically provided for in the Contract Documents there shall be no other basis for compensation for services or reimbursement for expenses rendered in any way related to the Contract Documents or the Project by or on behalf of Construction Manager.

11. Insurance.

Owner has elected to implement an Owner Controlled Insurance Program ("OCIP") in accordance with Schedule D, attached herein, that will provide Workers' Compensation, Employer's Liability and Excess "Umbrella" Insurance for the Construction Manager and all eligible Construction Contractors and sub-contractors of every tier providing direct labor on the Project. Owner agrees to pay all premiums associated with the OCIP including all deductibles or self-insured retentions unless otherwise stated in the Contract Documents.

The Owner will also provide, at it's own cost, builder's risk coverages as outlined in Scheduled D.

12. Value Engineering.

In furtherance of the foregoing (and not in limitation thereof), Construction Manager will use its best skill and judgment in making recommendations to Owner upon the appropriateness of each aspect of the construction of the Project Improvements, including suggesting alternatives which seek to reduce all unnecessary costs and any costs, including those which would cause the Project Budget to be exceeded.

13. Termination for Cause.

If Construction Manager shall fail to perform in accordance with the terms of the Contract Documents, Owner shall have the right to give written notice thereof to the Construction Manager. If the Construction Manager shall fail to cure such default within seven (7) days following the date such notice is given, then Owner shall have the right, upon notice, to terminate the Contract Documents applicable to the Project. Upon such termination, Construction Manager shall be entitled only to the "Termination Amount" as specified in Section 14 below, and Construction Manager shall be liable to Owner for all damages recoverable in law and equity related thereto.

14. Termination Without Cause.

Owner shall have the right to cancel the Contract Documents without cause upon giving written notice to Construction Manager, which termination shall be effective seven (7) days from the date such notice has been given. Should Owner so terminate without cause, Termination Amount then due Construction Manager, as of the date of such termination, will be payable thirty (30) days after Construction Manager submits a final billing therefor. As used herein, "Termination Amount" is deemed to be an amount equal to (1) the sum of the Total CM Fee plus Total GC Cost reduced by (2) the sum of all Current Construction Manager's Fee and Current GC Costs theretofore paid to Construction Manager assuming, solely for the purposes of this definition of Termination Amount, that the Total Construction Costs (as used in the definition of Total CM Fee and Total GC Cost) equals the total payments made to date and which are then, as of the date of Construction Manager's termination, currently due and payable (based on Work in place) to all Construction Contractors (and not including any amounts which may become due to Construction Contractors based upon Work to be supplied or performed following Construction Manager's termination). Payment of any Termination Amount requires a full release of all claims against Owner in any way related to the Project, including all of Construction Manager's lien rights. In determining the Termination Amount, if (A) the sum of all Current Construction Manager's Fee and Current GC Costs theretofore paid to Construction Manager exceeds (B) the sum of the Total CM Fee plus Total GC Cost (using the assumption set forth in the definition of Termination Amount) then Construction Manager shall promptly pay (and in any event within 10 days following Owner's written request) such excess to Owner.

15. Miscellaneous.

- (a) Owner and Construction Manager each binds itself, its successors, assigns, and legal representatives to the other party hereto and to the successors, assigns, and legal representatives of such other party with respect to all covenants, agreements, and obligations contained in the Contract Documents. Construction Manager shall not assign its rights or responsibilities under the Contract Documents without the prior written consent of Owner, which consent may be granted or withheld in Owner's sole discretion and any attempt to make such an assignment, without such consent, shall be null and void. Further, Construction Manager shall not assign any monies due or to become due to Construction Manager under the Contract Documents without the prior written consent of Owner.
- (b) Owner and Construction Manager have made and will continue throughout the term of the Contract Documents to make available to the other party confidential and proprietary materials and information ("Proprietary Information"). Prospectively, each party shall advise the other of material and information that is confidential and/or proprietary. All material and information provided by Owner to Construction Manager relating to the business, policies, procedures, customs,

forms, customers and strategies of Owner or any of its affiliates, including information previously divulged or delivered to Construction Manager by Owner regarding the aforementioned subject matter is hereby designated as confidential and proprietary and shall be considered to be Proprietary Information. It is understood that the obligations set forth in this Section do not apply to materials or information that: (i) are already, or otherwise become, generally known by third parties as a result of no act or omission of the receiving party; (ii) subsequent to disclosure hereunder are lawfully received from a third party having the right to disseminate the information without restriction on disclosure; (iii) are generally furnished to others by the disclosing party without restriction on disclosure; (iv) were already known by the receiving party prior to receiving them from the disclosing party and were not received from a third party in breach of that third party's obligations of confidentiality; or (v) are independently developed by the receiving party without the use of Proprietary Information of the disclosing party.

- (c) Each party shall maintain the confidentiality of the other party's Proprietary Information and will not use or disclose such Proprietary Information without the written consent of the other party. Notwithstanding the foregoing, Owner may disclose Construction Manager's Proprietary Information to its affiliates, agents, and other third parties on a need-to-know basis, provided that such parties are under a similar obligation to maintain the confidentiality of Construction Manager's Proprietary Information.
- (d) The Contract Documents will be governed and interpreted by the internal laws of the State of Illinois without reference to the conflict of law rules. Further, the parties consent to the jurisdiction and venue of the State and Federal Courts located in Chicago, Cook County, Illinois.
- (e) All notices, approvals, consents, requests for information and other communications required or permitted to be given by the Contract Documents shall be in writing. Written notices, approvals, consents, requests for information and other communications shall be deemed to have been duly served if (i) actually received by the individual or member of the firm or entity or by an officer of the corporation or partner in the partnership for which it was intended, or (ii) if mailed, within three calendar days after the date it is sent by either registered or certified mail, or if sent by overnight courier, on the weekday after it is delivered to such overnight courier, in each case addressed to Owner or Construction Manager, as the case may be, at the respective address provided in the Project Agreement for such notice to be given.
- (f) Both the person designated in the Agreement as Owner's Representative (Karl Wm. Auwarter) and Gary Fahrenbach, each acting alone, or any substitute for either of them designated as or authorized signatory for Owner in writing from Owner to Construction Manager, are each an Owner's representative with full power, acting alone, to bind Owner with respect to the Project. Wherever in the Contract Documents the consent or approval of Owner is required, such consent or approval will not be unreasonably withheld or delayed; provided, however, in no event shall the requirement that Owner not unreasonably withhold or delay its consent to any matter be deemed to require Owner to consent to (i) any breach of the Contract Documents or (ii) waive any express provision of the Contract Documents or (iii) any matter which by the terms of the Contract Documents Owner is permitted to grant or withhold its consent in its sole discretion.
- (g) Owner actively seeks out historically under-utilized businesses ("HUB's") which are qualified to fulfill Owner's requirements for goods and services purchased. If Construction Manager meets the state or federal qualifications to be a HUB, Construction Manager is encouraged to submit documentation supporting such status to Owner with the Agreement. Owner's Supplier Diversity Development Program ("SDDP") is committed to supporting HUBs with a focus on Minority and Women Business Enterprises and has taken affirmative steps to provide opportunities for their growth and participation in Owner's procurement process. Owner's primary suppliers, such as Construction Manager, are asked if it is feasible and, if using subcontractors to provide services, including labor and materials, required by Owner pursuant to the Contract Documents, to

subcontract with HUBs. Owner will consider the level of Construction Manager participation in SDDP before entering into the Agreement and in the quarterly evaluation of Construction Manager's performance under the Contract Documents. If Construction Manager utilizes one or more HUBs as subcontractors, Construction Manager shall submit a quarterly report of such utilization to Owner on Owner's SDDP form. SDDP underscores Owner's commitment to increase procurement activity with HUBs on a corporate-wide basis. Owner has a goal to utilize HUBs for an amount equal to 5% of the dollar amount of Owner's purchases. Construction Manager further acknowledges that upon Owner's request, Construction Manager will use its best efforts to use Minority and Women Business Enterprise ("M/WBE"), Small Disadvantaged Business ("SDB"), and Small Business Enterprise ("SBE") (each as certified by the appropriate state or local body responsible for such certification) as subcontractors. If Construction Manager uses M/WBE, SDB or SBE vendor(s), then Owner and Construction Manager will agree to the guidelines regarding the use of such vendors, in order to ensure that Construction Manager provides the services, including labor and materials, according to the terms of the Contract Documents. The provisions of this Section shall not modify or otherwise affect Construction Manager's obligation under any other provisions of the Contract Documents.

- (h) No action or failure to act by Owner or Construction Manager shall constitute a waiver of any right or duty afforded either of them under the Contract Documents, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing or otherwise set forth herein.
- (i) Construction Manager shall not, directly or indirectly, provide funds or other considerations to any person or entity (including Owner and Owner's employees and agents) to improperly procure special or unusual treatment with respect to the Contract Documents or for the purpose of otherwise improperly influencing the relationship between Owner and Construction Manager. Additionally, Construction Manager shall cause all of its officers, directors, employees, members, partners, agents, and each Construction Contractor to comply with restrictions contained in the preceding sentence. Construction Manager represents and warrants to Owner that Construction Manager, its officers, directors, employees, members, partners, agents, and each Construction Contractor have not at any time in the past directly or indirectly provided funds or other consideration to any person or entity to improperly procure special or unusual treatment with respect to the Contract Documents, or the other agreements referenced herein or for the purpose of otherwise improperly influencing the relationship between Owner and Construction Manager.
- (j) In the event of any dispute whatsoever between Owner and Construction Manager, Construction Manager shall continue to proceed diligently with performance as required by the Contract Documents provided that Owner continues to make all undisputed sums as required herein. Owner and Construction Manager shall make reasonable efforts to resolve each dispute within 30 days from the time the parties have knowledge of the existence of such disputes; provided, however, in no event shall delay in such determination excuse prompt and proper performance of Construction Manager's obligations under the Contract Documents or payment by Owner of undisputed sums as required herein.
- (k) The Contract Documents are made for the sole benefit of Construction Manager and Owner and no other person or entity shall have any right or action of any kind hereunder or be deemed to be a third party beneficiary of the Contract Documents or the services to be provided under any such agreement.
- (l) If any provision of any Contract Document is held invalid as applied to any fact or circumstance, such invalidity shall not affect the validity of such provisions as applied to any other fact or circumstances or the validity of any other provision of such agreements.
- (m) The words "include", "includes", "including" and any other derivation of "include" means "including but not limited to" unless specifically set forth to the contrary.

- (n) In the event of any litigation between the parties to construe or enforce the provisions of any Contract Document, the prevailing party in such litigation shall be entitled to recover from the other its reasonable attorneys' fees and expenses.
- (o) Each of the schedules to these General Conditions are by reference incorporated into and made a part of these General Conditions as fully and completely as though set forth at length in the body of these General Conditions.

LIST OF SCHEDULES
TO GENERAL CONDITIONS

SCHEDULE A Outline of Services

SCHEDULE B General Conditions Items

SCHEDULE C-1 Construction Services Agreement – Short Form

SCHEDULE C-2 Construction Services Agreement – Long Form

SCHEDULE C-3 Product Services Agreement

SCHEDULE D Owner Controlled Insurance Program